



IN THE HIGH COURT OF UGANDA SITTING AT GULU

Reportable
Criminal Appeal No. 0003 of 2019

In the matter between

LAGUM CONY

APPELLANT

And

UGANDA

RESPONDENT

Heard: 23 June, 2020.

Delivered: 14 August, 2020.

***Criminal Procedure** — Plea Taking — Section 124 (1) of The Magistrates Courts Act — requires the court to state “the substance of the charge” to an accused brought before it to take plea. This not only requires the court to recite the statement and particulars of the offence, but also to narrate the facts of the case before a conviction can be made. — Recitation of the facts following a plea of guilty, but before a conviction is made, is intended to ascertain the fact that the plea of guilty indeed constitutes an admission of all of the legal ingredients of the offence. It is intended to rule out the possibility of mistaken appreciation of the nature of the offence and to ascertain that the plea is thus unequivocal. —When the plea is accompanied by any qualification indicating that the accused is unaware of its significance, or if it appears to the trial Magistrate, for whatever reason, that a plea of guilty is not genuine, he or she must through the recitation of the facts obtain an unequivocal confirmation by way of admission of all the legal ingredients of the offence. — Where a plea of guilty is entered It is the duty of the court to record in detail the facts as narrated by the prosecutor.*

JUDGMENT

STEPHEN MUBIRU, J.

Introduction:

- [1] The appellant was charged with the offence Doing grievous harm C/s 219 of *The Penal Code Act*. It was alleged that on 9th November, 2018 at Acutamel village in Gulu District, the appellant unlawfully did grievous harm to Atto Santa. The appellant pleaded guilty and was sentenced to four years' imprisonment. The appellant was dissatisfied with the outcome.
- [2] The appellant filed a notice of appeal but did not file a memorandum of appeal nor submissions in support of the appeal, despite having been notified and given a month's period to do so. Consequently, neither did counsel for the respondent file submissions. However, considering that under section 28 (1) of *The Criminal Procedure Code Act*, a criminal appeal is commenced by a notice in writing signed by the appellant or an advocate on his or her behalf, it was incumbent upon this court to consider the merits of the appeal, despite the lapses of the appellant.

Duties of a first appellate court.

- [3] This being a first appeal, this court is under a duty to reappraise the evidence, subject it to an exhaustive scrutiny and draw its own inferences of fact, to facilitate its coming to its own independent conclusion, as to whether or not, the decision of the trial court can be sustained (see *Bogere Moses v. Uganda S. C. Criminal Appeal No.1 of 1997* and *Kifamunte Henry v. Uganda, S. C. Criminal Appeal No.10 of 1997*, where it was held that: "the first appellate Court has a duty to review the evidence and reconsider the materials before the trial judge. The appellate Court must then make up its own mind, not disregarding the judgment appealed against, but carefully weighing and considering it").
- [4] An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination, (see *Pandya v. Republic [1957] EA. 336*) and the appellate court's own decision on the evidence. The first

appellate court must itself weigh conflicting evidence and draw its own conclusion (see *Shantilal M. Ruwala v. R.* [1957] EA. 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's finding and conclusion; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, (see *Peters v. Sunday Post* [1958] E.A 424).

[5] Perusal of the record shows that the appellant was convicted and sentenced on her own plea of guilty. According to section 204 (3) of *The Magistrates Courts Act*, no appeal is allowed in the case of any person who has pleaded guilty and has been convicted on that plea by a magistrate's court except as to the legality of the plea or to the extent or legality of the sentence. In the instant case, it is the legality of the plea that may be called into question.

[6] Section 124 (1) of *The Magistrates Courts Act* requires the court to state "the substance of the charge" to an accused brought before it to take plea. This not only requires the court to recite the statement and particulars of the offence, but also to narrate the facts of the case before a conviction can be made. The case of *Adan v. Republic* [1970] EA 24 outlines the proper procedure on recording of pleas as follows:

- i. The charge and particulars of the offence should be explained to the accused, in the language that he/she understands.
- ii. The plea should as far as possible be recorded in the words of the accused.
- iii. In the event of plea of guilty the prosecution must then, immediately, state the facts to the accused, and he/she should be granted an opportunity to respond by way of disputing, explaining or adding any relevant facts.
- iv. If an accused disputes the facts of the charge a piece of not guilty must be entered.
- v. Where there is more than one accused jointly charged, the plea of each should be recorded separately. And if a charge or indictment

contains several counts, the accused must be asked to plead to them separately.

- vi. If an accused does not change his/her plea, a plea of guilty should be entered and a conviction recorded and after mitigation and facts relevant to sentence are taken, the sentence can be meted out.

[7] Recitation of the facts following a plea of guilty, but before a conviction is made, is intended to ascertain the fact that the plea of guilty indeed constitutes an admission of all of the legal ingredients of the offence. It is intended to rule out the possibility of mistaken appreciation of the nature of the offence and to ascertain that the plea is thus unequivocal. The law attaches so much importance to a plea of guilty in open court that no further proof is required of the accused's guilt. It is for that reason that Court should ensure that the plea is unequivocal and not made in circumstances suggesting that it is not a true admission of guilt.

[8] Those circumstances include ignorance, fear, duress, mistake or even the desire to gain a technical advantage. When the plea is accompanied by any qualification indicating that the accused is unaware of its significance, or if it appears to the trial Magistrate, for whatever reason, that a plea of guilty is not genuine, he or she must (and it is not a matter of discretion) through the recitation of the facts obtain an unequivocal confirmation by way of admission of all the legal ingredients of the offence. Where it becomes apparent to the Court, for whatever reason, that the accused person's version of facts is materially inconsistent with the plea, the court should give the accused the opportunity to withdraw the plea, and enter a plea of not guilty.

[9] In the instant case, after recording the appellant's response to the charge, the prosecutor stated to the court; "facts are as per charge sheet." The facts were not placed before court to establish the ingredients of the charge, nor to the accused to confirm their correctness. Consequently, the plea of guilty was equivocal, defective, irregular and unlawful as the facts were never read to the appellant nor the exhibits availed in court for the court to verify the degree of harm.

[10] It is the duty of the court to record in detail the facts as narrated by the prosecutor where a plea of guilty is entered (see *Uganda v. Kefa Jelala* [1979] HCB 88). The facts on the basis of which an offender is sentenced must generally be either proved to the requisite standard, admitted or agreed, abut in all cases, recorded. It is mandatory that the facts as recorded be narrated to the offender before conviction in order to indicate his or her agreement to the facts constituting the offence. This was a fatal lapse in the proceedings leading to the conviction and sentence.

Order:

[11] In the final result, for the foregoing reasons, the appeal is allowed. Accordingly, the conviction is quashed, and the sentence set aside. A retrial is ordered to be conducted by another magistrate of competent jurisdiction.

Delivered electronically this 14th day of August, 2020Stephen Mubiru.....
Stephen Mubiru
Resident Judge, Gulu

Appearances

For the appellant :

For the respondent :